

ESHB 2126 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/12/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that it is
4 important that dependent persons who are witnesses and victims of crime
5 cooperate with law enforcement and prosecutorial agencies and that
6 their assistance contributes to state and local enforcement efforts and
7 the general effectiveness of the criminal justice system. The
8 legislature finds that the state has an interest in making it possible
9 for courts to adequately and fairly conduct cases involving dependent
10 persons who are victims of crimes. Therefore, it is the intent of the
11 legislature, by means of this chapter, to insure that all dependent
12 persons who are victims and witnesses of crime are treated with
13 sensitivity, courtesy, and special care and that their rights be
14 protected by law enforcement agencies, prosecutors, and judges in a
15 manner no less vigorous than the protection afforded to other victims,
16 witnesses, and criminal defendants.

17 NEW SECTION. **Sec. 2.** Unless the context clearly requires
18 otherwise, the definitions in this section apply throughout this
19 chapter.

20 (1) "Crime" means an act punishable as a felony, gross misdemeanor,
21 or misdemeanor under the laws of this state or equivalent federal or
22 local law.

23 (2) "Dependent person" has the same meaning as that term is defined
24 in RCW 9A.42.010.

25 (3) "Victim" means a living person against whom a crime has been
26 committed.

27 (4) "Witness" means a person who has been or is expected to be
28 summoned to testify for the prosecution or defense in a criminal

1 action, or who by reason of having relevant information is subject to
2 call or likely to be called as a witness, whether or not an action or
3 proceeding has been commenced.

4 (5) "Family member" means a person who is not accused of a crime
5 and who is an adult child, adult sibling, spouse, parent, or legal
6 guardian of the dependent person.

7 (6) "Advocate" means any person not accused of a crime, including
8 a family member, approved by the witness or victim, in consultation
9 with his or her guardian if applicable, who provides support to a
10 dependent person during any legal proceeding.

11 (7) "Court proceedings" means any court proceeding conducted during
12 the course of the prosecution of a crime committed against a dependent
13 person, including pretrial hearings, trial, sentencing, or appellate
14 proceedings.

15 (8) "Identifying information" means the dependent person's name,
16 address, location, and photograph, and in cases in which the dependent
17 person is a relative of the alleged perpetrator, identification of the
18 relationship between the dependent person and the alleged perpetrator.

19 (9) "Crime victim/witness program" means any crime victim and
20 witness program of a county or local law enforcement agency or
21 prosecutor's office, any rape crisis center's sexual assault victim
22 advocacy program as provided in chapter 70.125 RCW, any domestic
23 violence program's legal and community advocate program for domestic
24 violence victims as provided in chapter 70.123 RCW, or any other crime
25 victim advocacy program which provides trained advocates to assist
26 crime victims during the investigation and prosecution of the crime.

27 NEW SECTION. **Sec. 3.** (1) In addition to the rights of victims and
28 witnesses provided for in RCW 7.69.030, there shall be every reasonable
29 effort made by law enforcement agencies, prosecutors, and judges to
30 assure that dependent persons who are victims or witnesses are afforded
31 the rights enumerated in this section. The enumeration of rights under
32 this chapter shall not be construed to create substantive rights and
33 duties, and the application of an enumerated right in an individual
34 case is subject to the discretion of the law enforcement agency,
35 prosecutor, or judge. Dependent persons who are victims or witnesses
36 in the criminal justice system have the following rights, which apply
37 to any criminal court or juvenile court proceeding:

1 (a) To have explained in language easily understood by the
2 dependent person, all legal proceedings and police investigations in
3 which the dependent person may be involved.

4 (b) With respect to a dependent person who is a victim of a sex or
5 violent crime, to have a crime victim advocate from a crime
6 victim/witness program, or any other advocate of the victim's choosing,
7 present at any prosecutorial or defense interviews with the dependent
8 person. This subsection applies unless it creates undue hardship and
9 if the presence of the crime victim advocate or other advocate does not
10 cause any unnecessary delay in the investigation or prosecution of the
11 case. The role of the crime victim advocate or other advocate is to
12 provide emotional support to the dependent person and to promote the
13 dependent person's feelings of security and safety.

14 (c) To be provided, whenever possible, a secure waiting area during
15 court proceedings and to have an advocate or support person remain with
16 the dependent person prior to and during any court proceedings.

17 (d) To allow an advocate to make recommendations to the prosecuting
18 attorney about the ability of the dependent person to cooperate with
19 prosecution and the potential effect of the proceedings on the
20 dependent person.

21 (e) To allow an advocate to provide information to the court
22 concerning the dependent person's ability to understand the nature of
23 the proceedings.

24 (f) To be provided information or appropriate referrals to social
25 service agencies to assist the dependent person with the emotional
26 impact of the crime, the subsequent investigation, and judicial
27 proceedings in which the dependent person is involved.

28 (g) To allow an advocate to be present in court while the dependent
29 person testifies in order to provide emotional support to the dependent
30 person.

31 (h) To provide information to the court as to the need for the
32 presence of other supportive persons at the court proceedings while the
33 dependent person testifies in order to promote the dependent person's
34 feelings of security and safety.

35 (i) To allow law enforcement agencies the opportunity to enlist the
36 assistance of other professional personnel such as victim advocates or
37 prosecutorial staff trained in the interviewing of the dependent
38 person.

1 (j) With respect to a dependent person who is a victim of a violent
2 or sex crime, to receive either directly or through the dependent
3 person's legal guardian, if applicable, at the time of reporting the
4 crime to law enforcement officials, a written statement of the rights
5 of dependent persons as provided in this chapter. The statement may be
6 paraphrased to make it more easily understood. The written statement
7 shall include the name, address, and telephone number of a county or
8 local crime victim/witness program, if such a crime victim/witness
9 program exists in the county.

10 (2) Any party may request a preliminary hearing for the purpose of
11 establishing accommodations for the dependent person consistent with,
12 but not limited to, the rights enumerated in this section.

13 NEW SECTION. **Sec. 4.** (1) The prosecutor or defense may file a
14 motion with the court at any time prior to commencement of the trial
15 for an order authorizing the taking of a video tape deposition for the
16 purpose of preserving the direct testimony of the moving party's
17 witness if that witness is a dependent person.

18 (2) The court may grant the motion if the moving party shows that
19 it is likely that the dependent person will be unavailable to testify
20 at a subsequent trial. The court's finding shall be based upon, at a
21 minimum, recommendations from the dependent person's physician or any
22 other person having direct contact with the dependent person and whose
23 recommendations are based on specific behavioral indicators exhibited
24 by the dependent person.

25 (3) The moving party shall provide reasonable written notice to the
26 other party of the motion and order, if granted, pursuant to superior
27 court criminal rules for depositions.

28 (4) Both parties shall have an opportunity to be present at the
29 deposition and the nonmoving party shall have the opportunity to cross-
30 examine the dependent person.

31 (5) Under circumstances permitted by the rules of evidence, the
32 deposition may be introduced as evidence in a subsequent proceeding if
33 the dependent person is unavailable at trial and both the prosecutor
34 and the defendant had notice of and an opportunity to participate in
35 the taking of the deposition.

1 NEW SECTION. **Sec. 5.** (1) The failure to provide notice to a
2 dependent person of the rights enumerated in this chapter or the
3 failure to provide the rights enumerated shall not result in civil
4 liability so long as the failure was in good faith.

5 (2) Nothing in this chapter shall be construed to limit a party's
6 ability to bring an action, including an action for damages, based on
7 rights conferred by other state or federal law.

8 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
9 a new chapter in Title 7 RCW.

10 NEW SECTION. **Sec. 7.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected."

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14 On page 1, line 2 of the title, after "witnesses;" strike the
15 remainder of the title and insert "and adding a new chapter to Title 7
16 RCW."

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